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MUHAMMAD MALIKI ABDUL HALIM v. LEFTENAN KOLONEL SHAIFULLIZAN ABDUL AZIZ (PEGAWAI MEMERINTAH BATALION KE-5 REJIMEN RENJER DIRAJA) & ORS AND ANOTHER APPEAL

B

FEDERAL COURT, PUTRAJAYA
WAN AHMAD FARID SALLEH CJ
NORDIN HASSAN FCJ
VAZEER ALAM MYDIN MEERA FCJ
[CIVIL APPEAL: NOS: 01(f)-29-09-2024(D)
C & 01(f)-30-09-2024(D)]
11 NOVEMBER 2025

Abstract – *(i) Section 96(3) of the Armed Forces Act 1972 ('AFA') imposes a mandatory requirement that an accused soldier, whose charge* D *is to be tried by a Court-Martial, shall be remanded for the trial. This requirement is reinforced by the need for strict compliance with laws concerning military discipline and is further supported by r. 16(1) of the Armed Forces (Court-Martial) Rules of Procedure 1976 ('AFRP'), which empowers the authority to place the accused under close arrest pending* E *trial unless otherwise directed; (ii) There is no legal necessity under s. 96(3) of the AFA for the authority to issue an express remand order for detention pending trial by Court-Martial. The unambiguous wording of the provision itself authorises or mandates the remand.*

F ***ARMED FORCES:*** *Court-Martial – Detention – Soldier's urine tested positive for drugs – Detention of soldier by military authorities pending investigation and trial before Court-Martial – Whether detention lawful – Whether express remand order required – Armed Forces Act 1972, ss. 51 & 96(3) – Armed Forces (Court-Martial) Rules of Procedure 1976, rr. 13, 14 & 16(1)*

G The urine sample of the appellant, a soldier, was found to have contained methamphetamine, which was prohibited by a standing order pursuant to s. 51 of the Armed Forces Act 1972 ('AFA'). The appellant was brought before his commanding officer for investigation and was placed under close arrest pending the completion of the investigation. At the conclusion of the H investigation, the appellant was found guilty. He elected to be tried by Court-Martial and was further placed under close arrest pending the disposal of the trial. During the Court-Martial, the appellant pleaded not guilty. The trial was adjourned to another date but on that date, the trial was postponed. The appellant was eventually released on open arrest pending trial before the I Court-Martial. The appellant filed a suit against the respondents, at the High Court, for unlawful detention for the period of the detention: (i) pending

investigation, from 7 August 2014 until 26 August 2014; and (ii) pending trial before the Court-Martial, from 26 August 2014 until 3 July 2015. The High Court held that the appellant's detention (i) from 7 August 2014 to 26 August 2014, was lawful; and (ii) from 26 August 2014 until 3 July 2015, was unlawful. Upon appeal, the Court of Appeal held that the appellant's detention for both periods was lawful. Hence, the present appeal. The issues that arose for adjudication were: (i) whether the appellant's detention from 26 August 2014 until 3 July 2015 was lawful and valid; and (ii) whether an express remand order was required under s. 96(3) of the AFA.

Held (dismissing appeal)
Per Nordin Hassan FCJ delivering the judgment of the court:

(1a) Section 96(3) of the AFA authorised the appellant's remand pending trial before the Court-Martial. Although there were instances where the word 'shall' did not carry a mandatory obligation, the word 'shall' in s. 96(3) denoted a mandatory requirement, especially when the AFA concerned, *inter alia*, the discipline of army personnel that required strict compliance with the law. Furthermore, during the appellant's trial by the Court-Martial, the authority was empowered to place him under close arrest except if the convening authority directed that the appellant be placed under open arrest or released from the arrest. This was provided under r. 16(1) of the Armed Forces (Court-Martial) Rules of Procedure 1976 ('AFRP'). (paras 35-37)

(1b) Rules 13 and 14 of the AFRP did not affect the power of arrest by the commanding officer under s. 93(1) and (3) of the AFA. Rules 13 and 14 of the AFRP had not been infringed. There was no inconsistency or repugnancy, either in the AFA or between the AFA and the AFRP. The issue of harmonious construction or interpretation did not arise. The appellant was, therefore, lawfully detained by the authority from 26 August 2014 until 3 July 2015. (paras 55-57)

(2) There was no requirement, under s. 96 of the AFA, in particular s. 96(3), that required the authority to issue an express remand order. The provision of s. 96(3) was unambiguous that if the charge against the accused was to be tried by the Court-Martial, the accused shall be remanded for the trial. The law authorised or mandated that the accused be remanded pending trial by the Court-Martial. As such, there was no necessity for an express remand order. (para 58)

Bahasa Melayu *Headnotes*

Sampel air kencing perayu, seorang askar, didapati mengandungi methamphetamine, yang dilarang oleh perintah tetap bawah s. 51 Akta Angkatan Tentera 1972 ('AAT'). Perayu dihadapkan ke pegawai pemerintahnya untuk siasatan dan diletakkan bawah tahanan ketat sementara menunggu siasatan selesai. Perayu didapati bersalah pada penutup siasatan.

A Dia memilih untuk dibicarakan oleh Mahkamah Tentera dan, berikutan itu, diletakkan bawah tahanan ketat sementara menunggu pelupusan perbicaraan. Semasa perbicaraan Mahkamah Tentera, perayu mengaku tidak bersalah. Perbicaraan ditangguhkan ke tarikh lain tetapi, pada tarikh tersebut, perbicaraan ditangguhkan lagi. Perayu akhirnya dibebaskan secara tahanan
B terbuka sementara menunggu perbicaraan di Mahkamah Tentera. Perayu memfailkan guaman terhadap responden, di Mahkamah Tinggi, untuk penahanan salah bagi tempoh penahanan: (i) sementara menunggu siasatan, dari 7 Ogos 2014 hingga 26 Ogos 2014; dan (ii) sementara menunggu perbicaraan di Mahkamah Tentera, dari 26 Ogos 2014 hingga 3 Julai 2015.
C Mahkamah Tinggi memutuskan bahawa penahanan perayu (i) dari 7 Ogos 2014 hingga 26 Ogos 2014, sah di sisi undang-undang; dan (ii) dari 26 Ogos 2014 hingga 3 Julai 2015, menyalahi undang-undang. Susulan rayuan, Mahkamah Rayuan memutuskan bahawa penahanan perayu bagi kedua-dua tempoh sah di sisi undang-undang. Maka timbul rayuan ini. Isu-isu berbangkit untuk diputuskan adalah: (i) sama ada penahanan perayu, dari
D 26 Ogos 2014 hingga 3 Julai 2015, sah di sisi undang-undang; dan (ii) sama ada perintah reman nyata diperlukan bawah s. 96(3) AAT.

Diputuskan (menolak rayuan)
Oleh Nordin Hassan HMP menyampaikan penghakiman mahkamah:

E **(1a)** Seksyen 96(3) AAT memperuntukkan kuasa mereman perayu sementara menunggu perbicaraan di Mahkamah Tentera. Walaupun terdapat keadaan apabila perkataan 'hendaklah' tidak membawa kewajipan mandatori, perkataan 'hendaklah' dalam s. 96(3) merujuk pada keperluan mandatori, terutamanya apabila AAT berkaitan,
F antara lain, dengan disiplin anggota tentera yang mengkehendaki pematuhan ketat undang-undang. Tambahan lagi, semasa perbicaraan perayu oleh mahkamah tentera, pihak berkuasa diberi kuasa meletakkan perayu bawah tahanan ketat kecuali jika pihak berkuasa tersebut mengarahkan perayu diletakkan bawah tahanan terbuka atau
G dibebaskan daripada tahanan. Ini diperuntukkan bawah k. 16(1) Kaedah-kaedah Acara Angkatan Tentera (Mahkamah Tentera) 1976 ('KKAAT').

(1b) Kaedah 13 dan 14 KKAAT tidak menjejaskan kuasa tangkap oleh pegawai pemerintah bawah s. 93(1) dan (3) AAT. Kaedah 13 dan 14
H KKAAT tidak dicabuli. Tiada percanggahan atau ketidakseragaman, sama ada dalam AAT atau antara AAT dan KKAAT. Isu tafsiran harmonis tidak timbul. Oleh itu, perayu telah ditahan secara sah di sisi undang-undang oleh pihak berkuasa dari 26 Ogos 2014 hingga 3 Julai 2015.

I **(2)** Tiada keperluan, bawah s. 96 AAT, khususnya s. 96(3), yang menghendaki agar pihak berkuasa mengeluarkan perintah reman nyata. Peruntukan s. 96(3) adalah jelas bahawa jika pertuduhan

terhadap seorang tertuduh akan dibicarakan oleh Mahkamah Tentera, tertuduh tersebut hendaklah direman untuk perbicaraan. Undang-undang memperuntukkan kuasa atau mewajibkan tertuduh direman sementara menunggu perbicaraan oleh Mahkamah Tentera. Oleh itu, tiada keperluan untuk perintah reman nyata.

Case(s) referred to:

Abdullah Attan v. PP & Others Appeals [2020] 9 CLJ 151 FC ***(refd)***
Andrew Thamboosamy v. Superintendent Of Pudu Prisons, Kuala Lumpur [1976] CLJU 5; [1976] 1 LNS 5 FC ***(refd)***
Baharuddin Kamsin v. Pihak Berkuasa Sidang Panglima Armada Pengkalan TLDM Lumut [1995] CLJU 310; [1995] 1 LNS 310 HC ***(refd)***
Datuk Harun Hj Idris v. Officer-In-Charge, Pudu Prison [1981] CLJU 77; [1981] 1 LNS 77 FC ***(refd)***
In Re The Detention Of S Sivarasa & Ors [1997] 1 CLJ 471 HC ***(refd)***
Inspector Yusof Hj Othman & Ors v. Kwan Hun Cheong & Ors [2011] 8 CLJ 1 ***(refd)***
Lau Kong Peng & Ors v. PP [1998] 4 CLJ Supp 156 HC ***(refd)***
Leftenan Kolonel Hafiz Hj Sulaiman & Ors v. Zulkefli Mohamed [2023] 8 CLJ 700 CA ***(refd)***
Letitia Bosman v. PP & Other Appeals [2020] 8 CLJ 147 FC ***(refd)***
Lock Wee Kock v. Menteri Hal Ehwal Dalam Negeri & Anor [1993] 4 CLJ 211 SC ***(refd)***
Loh Kooi Choon v. Government Of Malaysia [1975] CLJU 90; [1975] 1 LNS 90 FC ***(refd)***
Low Cheng Soon v. TA Securities Sdn Bhd [2003] 1 CLJ 309 CA ***(refd)***
Minister Of Home Affairs v. Chu Choon Yong & Anor [1977] CLJU 71; [1977] 1 LNS 71 FC ***(refd)***
Ooi Ah Phua v. Officer-In-Charge, Criminal Investigation, Kedah/Perlis [1975] CLJU 118; [1975] 1 LNS 118 HC ***(refd)***
Pihak Berkuasa Tatatertib Majlis Perbandaran Seberang Perai & Anor v. Muziadi Mukhtar [2020] 1 CLJ 1 FC ***(refd)***
Polis Diraja Malaysia v. Audrey Keong Mei Cheng [1994] 3 CLJ 362 HC ***(refd)***
PP v. Cho Ka Heng [1994] 2 CLJ 806 HC ***(refd)***
PP v. Sihabduin Hj Salleh & Anor [1981] CLJ 39; [1981] CLJ (Rep) 82 FC ***(refd)***
Re Detention Of Leonard Teoh Hooi Leong [1998] 1 CLJ 857 HC ***(refd)***
Savrimuthu Sinnapan v. PP [1987] 1 CLJ 368; [1987] CLJ (Rep) 322 SC ***(refd)***
Sjn U Ahmad Zaini Zainon lwn. Kolonel TUDM Norazrin Shamsudin & Yang Lain Appeal No. 05(HC)-150-07-2021(B) (Unreported) ***(refd)***
SK Tangakaliswaran Krishnan v. Menteri Dalam Negeri, Malaysia & Ors [2009] 6 CLJ 705 FC ***(refd)***
Sri Sanjeevan Ramakrishnan v. ASP Poonnam E Keling & Ors [2025] 5 CLJ 509 FC ***(refd)***

Legislation referred to:

Armed Forces (Court-Martial) Rules of Procedure 1976, rr. 13(1), (2)(b), 14(1), 15(3), 16(1)
Armed Forces Act 1972, ss. 2, 51, 93(1), (3), 94(1), (2), 95, 96(3), 97(9)
Criminal Procedure Code, s. 117(7)
Dangerous Drugs Act 1952, s. 39B
Federal Constitution, art. 5(1), (2)
Interpretation Acts 1948 and 1967, s. 54(2)

A *For the appellant - Hisyam Teh Poh Teik, Low Wei Loke, Shaharuddin Mohamed & Nur Shafika Mustaffa; M/s Shaharuddin Hidayu & Marwaliz*

For the respondents - Nur Ezdiani Roleb, Siti Norashikin Hassanor & Wan Nur Muhammad Ehsan Alauddin; AG's Chambers

[Editor's note: For the Court of Appeal judgment, please see Leftenan Kolonel Shaifullizan
B *Abd Aziz & Ors v. Muhammad Maliki Abdul Halim & Another Appeal [2025] CLJU 822 (affirmed); For the High Court judgment, please see Muhammad Maliki Abdul Halim lwn. Leftenan Kolonel-Shaifullizan Abd Aziz & Yang Lain [2022] CLJU 2692; [2022] 1 LNS 2692 (overruled).]*

Reported by Najib Tamby

C **JUDGMENT**

Nordin Hassan FCJ:

Introduction

[1] The appellant filed two appeals before this court against the decisions
D of the Court of Appeal, which are as follows:

(i) Civil Appeal No: 01(f)-29-09-2024(D) concerning the decision of the Court of Appeal in dismissing the appellant's appeal regarding the quantum of damages awarded by the High Court; and

E (ii) Civil Appeal No: 01(f)-30-09-2024(D) concerning the decision of the Court of Appeal in allowing the respondent's appeal against the decision of the High Court that allowed the appellant's claim for wrongful detention.

[2] This court allowed one leave question for the present appeal, which
F is as follows:

> Whether an accused person, upon being investigated under the Armed Forces Act 1972 and where the charge is not dealt with summarily, be remanded automatically under section 96(3) of the said Act without having to consider the remand procedures prescribed under section 94 of
G the Act and rules 4, 15(1), 15(2), 16(1), and 38(1) of the Armed Forces (Court-Martial) Rules of Procedure 1976, with regard to remand pending trial by a Court Martial.

The Background Facts

[3] The undisputed brief facts in the present case are as follows:
H

(i) the appellant was a soldier in the 5th Battalion of the Royal Ranger Regiment, Desa Pahlawan Army Camp, Kota Bahru, Kelantan ('the army camp');

(ii) the first respondent was the appellant's commanding officer at the
I army camp;

(iii) on 29 March 2014, at about 12.30am, a drug prevention operation was conducted in the army camp, where 26 rangers, including the appellant, were instructed to provide their urine samples. These urine samples were then sent to the Chemistry Department of Malaysia for analysis. The analysis found that out of the 26 urine samples, nine of the samples, including the appellant's urine sample, contained methamphetamine, a drug substance prohibited by a 'standing order' made under s. 51 of the Armed Forces Act 1972 ('the AFA');

(iv) on 7 August 2014, the appellant was brought before the first respondent under s. 95 of the AFA, for the investigation of the charge of contravening the 'standing order', which was an infringement of s. 51 of the same Act;

(v) the first respondent then placed the appellant under close arrest pending the completion of the investigation under rr. 13 and 14 of the Armed Forces (Court-Martial) Rules of Procedure 1976 (the AFRP);

(vi) on 26 August 2014, upon the completion of the investigation, the appellant was brought before the first respondent and was informed that the appellant was guilty of the charge under s. 51 of the AFA. Before recording the said finding of guilt, the first respondent informed the appellant of his rights to elect to be tried by the Court-Martial under s. 97(9) of the AFA;

(vii) the appellant then elected to be tried by the Court-Martial and was then further placed under close arrest pending the disposal of the trial before the Court-Martial;

(viii) on 8 April 2014, the appellant was brought before the Court-Martial and the charge under s. 51 of the AFA was read to the appellant which the appellant pleaded not guilty and claimed trial. However, the trial was adjourned to 18 May 2015 until 20 May 2015 to enable the charge to be served on the appellant's counsel;

(ix) on 18 May 2015 to 20 May 2015, the trial before the Court-Martial was postponed due to the unavailability of the prosecuting officer, and the trial was deferred to 22 June 2015 until 23 June 2015;

(x) on 2 June 2015, the appellant's counsel applied to the High Court for a writ of *habeas corpus* for the appellant's release from detention. The hearing of the application was scheduled for 13 July 2015;

(xi) however, before the hearing date of the *habeas corpus* application, on 3 July 2015, the appellant was released on open arrest pending the trial before the Court-Martial. In the circumstances, the application for *habeas corpus* was withdrawn; and

(xii) the trial before the Court-Martial commenced on 15 October 2015 until its conclusion.

A **The Proceedings At The High Court**

[4] The appellant filed a civil suit against the respondents in the High Court for an unlawful detention concerning the period of his close arrest, and the alleged unlawful detention includes the detention pending investigation from 7 August 2014 until 26 August 2014 and the detention pending the trial
B before the Court-Martial from 26 August 2014 until 3 July 2015.

[5] In the suit, the appellant sought a declaration that his detention was unlawful and prays for general damages, exemplary damages, aggravated damages, and special damages.

C **[6]** Before the High Court, both parties agreed to confine to two issues for the determination of the court, which are the following:

(i) whether the appellant's detention from 7 August 2014 until 3 July 2015 was lawful; and

D (ii) if the whole period of the appellant's detention or part of it was unlawful, whether the appellant is entitled to be compensated, and the amount of the compensation.

[7] Having considered the evidence before the court, the Judicial Commissioner identified that there were two stages of the appellant's
E detention, which are as follows:

(i) the appellant's detention from 7 August 2014 until 26 August 2014, which was the close arrest of the appellant pending investigation by the first respondent; and

F (ii) the appellant's detention from 26 August 2014 pending the trial before the Court-Martial until 3 July 2015, the date when the appellant was placed under open arrest.

[8] Regarding the appellant's detention from 7 August 2014 to 26 August 2014, the Judicial Commissioner found that the detention was lawful, as all
G the legal provisions and requirements had been complied with by the first respondent. In this regard, the High Court found that the first respondent had made a special report as required under s. 94(2) of the AFA when the detention was more than eight days, and the appellant's detention did not exceed 72 days as stipulated under r. 15(3) of the AFRP.

H **[9]** However, it was the findings of the Judicial Commissioner that the appellant's detention from 26 August 2014 until 3 July 2015, that is, after the appellant elected to be tried before the Court-Martial, was unlawful.

[10] The Judicial Commissioner was of the view that the appellant's remand order under s. 96(3) of the AFA was unenforceable, and the close
I arrest imposed against the appellant under r. 16(1) of the ARFP can only be executed when the trial against the appellant before the Court-Martial

commences, and that is on 15 October 2015, after the prosecution called their first witness to testify. The cases of *Savrimuthu Sinnapan v. PP* [1987] 1 CLJ 368; [1987] CLJ (Rep) 322; [1987] 2 MLJ 173, and the High Court case *Baharuddin Kamsin v. Pihak Berkuasa Sidang Panglima Armada Pengkalan TLDM Lumut* [1995] CLJU 310; [1995] 1 LNS 310; [1996] 4 MLJ 184 were relied upon by the Judicial Commissioner to support his findings.

[11] The Judicial Commissioner was also of the view that, although there is no time period for a detention by the Court-Martial, s. 54(2) of the Interpretations Act 1948 and 1967 applies, which states that the conduct must be made at a "convenient speed". This was found to have failed to be observed by the respondents in the present case.

[12] Further, the Judicial Commissioner found that, as there was no express remand order made under s. 96(3) of the AFA, the appellant's detention was invalid and unlawful.

[13] The Judicial Commissioner concluded that the appellant's detention from 26 August 2014 until 3 July 2015 was unlawful and awarded the appellant compensation of RM300,000 with costs of RM30,000.

The Proceedings At The Court Of Appeal

[14] There are two appeals before the Court of Appeal, which were the respondents' appeal against the decision of the High Court that the appellant's detention pending trial before the Court-Martial was unlawful, in Civil Appeal No. D-01(NCvC)(W)-750-10-2022, and the appellant's appeal concerning the compensation in Civil Appeal No. D-01(NCvC)(W)-763-10-2022.

[15] In the unanimous decision of the Court of Appeal, it was decided that the appellant's detention pending investigation by the first respondent from 7 August 2014 until 26 August 2014 and pending trial before the Court-Martial from 26 August 2014 until 3 July 2015 was in accordance with the law. The detention was, therefore, lawful.

[16] In coming to this decision, the Court of Appeal found that the appellant's arrest was lawfully made under s. 93(1) of the AFA, and the appellant's detention pending investigation was lawfully made, having complied, among others, with s. 94(2) of the AFA and r. 15(3) of the AFRP.

[17] The Court of Appeal further viewed that the appellant's detention pending trial before the Court-Martial from 26 August 2014 until 3 July 2015 was in accordance with s. 96(3) of the AFA and r. 16(1) of the AFRP.

[18] It was also the decision of the Court of Appeal that there is no requirement under the AFA and the AFRP for an express remand order for the appellant's detention.

[19] Consequently, it was held that art. 5(1) of the Federal Constitution had not been breached in the present case.

[20] As a result, the respondents' appeal against the Judicial Commissioner's decision that the appellant's detention pending trial before the Court-Martial was unlawful in Civil Appeal No. D-01(NCvC)(W)-750-10-2022 was allowed, and the appellant's appeal in Civil Appeal No. D-01 (NCvC)(W)-763-10-2022 concerning the compensation was dismissed.

The Appeal Before This Court

[21] The main issues in the present appeal, as submitted by the parties and reflected in the granted leave question before us, are the following:

(i) whether the appellant's detention from 26 August 2014, the date the appellant was charged under s. 51 of the Armed Forces Act 1972 (the AFA), until 3 July 2015, the date the appellant was placed under open arrest, was lawful and valid; and

(ii) whether an express remand order is required under s. 96(3) of the AFA.

First Issue: Whether The Appellant's Detention From 26 August 2014, The Date The Appellant Was Charged Under s. 51 Of The AFA, Until 3 July 2015, The Date The Appellant Was Placed Under Open Arrest, Was Lawful And Valid

[22] To begin with, it is trite that a lawful detention is a detention that is sanctioned or allowable under the law. Article 5(1) of the Federal Constitution states in clear terms that no person shall be deprived of his life and personal liberty save in accordance with the law. If the court finds that the detention of a person is unlawful, the court shall order his release as required under art. 5(2) of the Federal Constitution.

(See also *Datuk Harun Hj Idris v. Officer-In-Charge, Pudu Prison* [1981] CLJU 77; [1981] 1 LNS 77; [1981] 1 MLJ 47; *Ooi Ah Phua v. Officer-In-Charge, Criminal Investigation, Kedah/Perlis* [1975] CLJU 118; [1975] 1 LNS 118; [1975] 2 MLJ 198).

[23] It is also a settled principle of law that once there is an allegation of unlawful detention, the burden shifts to the detaining authority to show that the detention was made under a valid legal power, or in other words, that the detention was lawful. There is a plethora of authority on this principle of law, and this court in *SK Tangakaliswaran Krishnan v. Menteri Dalam Negeri, Malaysia & Ors* [2009] 6 CLJ 705 succinctly explained as follows:

> [5] In my considered judgment, the point at stake falls to be resolved with reference to the principles governing the burden of proof in an application for *habeas corpus*. *It is settled law that on an application for habeas corpus, the burden of satisfying the court that the detention is lawful lies throughout on the detaining authority*. See, *Chng Suan Tze v. The Minister of Home Affairs & Ors And Other Appeals* [1988] CLJU 162; [1988] 1 LNS 162. In *Mohinuddin*

v. District Magistrate, Beed, AIR [1987] SC 1977, the Supreme Court of India observed as follows in the context of art. 22 of the Indian Constitution, from which is drawn our art. 151:

> *It is enough for the detenu to say that he is under wrongful detention, and the burden lies on the detaining authority to satisfy the Court that the detention is not illegal or wrongful and that the petitioner is not entitled to the relief claimed.* This Court, on more occasions than one, has dealt with the question, and it is now well-settled that it is incumbent on the State to satisfy the Court that the detention of the petitioner/detenu was legal and in conformity not only with the mandatory provisions of the Act but also strictly in accord with the constitutional safeguards embodied in Art. 22(5). (emphasis added)

[24] This court, in the case of *Minister Of Home Affairs v. Chu Choon Yong & Anor* [1977] CLJU 71; [1977] 1 LNS 71; [1977] 2 MLJ 20, cited with approval the view in *Andrew Thamboosamy v. Superintendent Of Pudu Prisons, Kuala Lumpur* [1976] CLJU 5; [1976] 1 LNS 5; [1976] 2 MLJ 156, which reads as follows:

> *... When a person complains that he is being illegally or improperly detained, it is for the detaining authority to justify the detention. If the person who signed that order had power to do so and had before, when and after signing that order, complied with all conditions laid down by the law, then the order of detention which is authentic and made in good faith is sufficient answer, and the court must hold the order and detention lawful* – unless the detainee alleges and can prove *mala fides.* (emphasis added)

[25] In a recent case of *Sri Sanjeevan Ramakrishnan v. ASP Poonnam E Keling & Ors* [2025] 5 CLJ 509, Vazeer Alam FCJ, in the grounds of judgment, echoed the same view when he said this:

> [42] The cause of action for a tort of *false imprisonment arises when a person has been imprisoned without lawful justification or just cause,* and that action is against the person who caused the imprisonment. *And the law is well-settled, in that, to establish a claim for the tort of false imprisonment, the claimant must prove:*
>
> (i) the *fact of imprisonment;* and
>
> (ii) the *absence of lawful authority to justify that imprisonment.*
>
> [43] The law on this is well-settled, as was stated by the Court of Appeal in *Shahrudi*'s case:
>
> > [25] Coming now to the instant claim, the law on false imprisonment is settled in that once a plaintiff establishes the imprisonment, the burden of proving justification lies with the defendant (see *Hicks v. Faulkner* (1878) 8 QBD 167 at p. 170). As stated by Lord Atkin in *Liversidge v. Anderson* [1942] AC 206 at p. 245 (dissenting): "one of the pillars of liberty is that in English law, every imprisonment is *prima facie* unlawful and that it is for the person directing the imprisonment to justify his act", (as observed in Judith Farbey, RJ Sharpe and Simon Atrill, *The Law of Habeas Corpus* (3rd edn.) Oxford (2011) at p. 88).

A ...

[28] As mentioned earlier, *it was for the respondents to establish that they had acted in accordance with the law.* (emphasis added)

[26] Reverting to the present case, the appellant was arrested for having a drug substance, methamphetamine, in his urine sample, which is prohibited B by a 'standing order' made under s. 51 of the AFA. In this regard, the power of arrest is provided under s. 93(1) of the AFA, which states:

(1) Every person subject to service law under the Armed Forces Act 1972 found *committing an offence against any provision of the Armed Forces Act 1972, or alleged to have committed or reasonably suspected of having committed any such* C *offence, may be arrested* in accordance with the following provisions.

…

(3) A serviceman or a volunteer (when subject to service law under this Act) *may be arrested by any officer, warrant officer, or non-commissioned officer of* D *the regular forces:*

Provided that a person shall not be arrested by virtue of this subsection except by a person of superior rank. (emphasis added)

[27] The appellant was placed under arrest pending investigation by the first respondent, his commanding officer, for having a drug substance in his E urine sample, a prohibited substance by a 'standing order' made under s. 51 of the AFA. Therefore, the appellant's arrest was in accordance with ss. 93(1) and 93(3) of the AFA. Rule 15(1) of the AFRP only states that an arrest must not be carried out for offences which are not serious in nature, and it does not apply in the present case, as this case involves the consumption of F dangerous drugs, a serious offence, by an army personnel who infringed the 'standing order' made under s. 51 of the AFA.

[28] Thereafter, the first respondent investigated the charge against the appellant, which was under s. 51 of the AFA, as required under ss. 94(1) and (2) and 95 of the AFA and r. 14(1) of the AFRP. For ease of reference, G the provisions stated are as follows:

(i) Section 94 – Provisions for avoiding delay after arrest

(1) The allegations against any person subject to service law under this Act who is under arrest *shall be duly investigated without unnecessary delay,* and as soon as may be, either proceedings shall H be taken for punishing his offence, or he shall be released from arrest.

(2) Wherever any person subject to service law under this Act, having been taken into service custody, remains under arrest for a longer *period than eight days* without a Court-Martial for his trial I being assembled, *a special report for the necessity for further delay shall be made by his commanding officer to the prescribed authority in the*

prescribed manner, and a similar report to the like authority and in the like manner every eight days until a Court-Martial is assembled or the offence is dealt with summarily or he is released from arrest.

(ii) Section 95 – Investigation of charges by commanding officer

Before an allegation against a person subject to service law under this Act (hereinafter referred to as "the accused") that he has committed an offence against any provision of this Part is further proceeded with, the allegation shall be reported, in the form of a charge, to the accused's commanding officer, and *the commanding officer shall investigate the charge in the prescribed manner.*

(iii) Rule 14 – Reconsideration of arrest and investigation

(1) Subject to Rule 13, *the person responsible (normally the commanding officer or the provost officer) for deciding whether a person should be kept under arrest* and what the form of arrest should be, shall use his discretion from time to time, as circumstances may require, to change the form of arrest, to re-arrest or to release him without prejudice to re-arrest.

(2) The allegations against a person who is under arrest *shall be duly investigated into without unnecessary delay,* and as soon as possible, proceedings shall be instituted against him or he shall be duly released. (emphasis added)

[29] In the present case, it is not disputed that the first respondent, as the appellant's commanding officer, has investigated the charge against the appellant as required and in accordance with ss. 94 and 95 of the AFA and r. 14 of the AFRP.

[30] The mandatory duty of the commanding officer to investigate the charge has been re-emphasised in *Leftenan Kolonel Hafiz Hj Sulaiman & Ors v. Zulkefli Mohamed* [2023] 8 CLJ 700; [2023] 5 MLJ 548, where the court said this:

[18] We are of the following view regarding a commanding officer's duties and discretionary powers with regard to a complaint that the accused has breached a SO pursuant to s. 51 AFA:

(1) **s. 95 AFA mandatorily requires the accused's commanding officer to investigate the charge against the accused (investigation).** (emphasis added)

[31] Before we proceed further, it is important to understand the meaning of the terms 'open arrest' and 'close arrest' under the AFA and the AFRP. Section 2 of the AFA defines the word arrest as follows:

"arrest" includes open arrest and arrest by the civil power;

[32] In the "*Military Legal Proceedings in Malaysia*" by Teo Say Eng and Colonel Wan Normazlan, (Kuala Lumpur: Lexis Nexis, 2009) the terms 'open arrest' and 'close arrest' were explained in the following words:

> Open arrest
>
> In the case of open arrest, a commanding officer may limit the freedom of movement of an accused person to a certain place or area within the precinct of the mess, the camp of his unit, or base area. The commanding officer may also limit his social activities or impose certain conditions, such as to be in uniform when appearing outside the area he is confined to. The accused shall not leave the confined area except that he is to perform his duty or be assigned other duties.
>
> Close arrest
>
> In the case of close arrest, the accused shall be confined in the guard room or unit detention room or any other place as determined by the commanding officer and be placed under the charge of a guard, patrol, sentry, or provost officer. A bodily search will be conducted. Any weapon or article which he could use to injure himself or others, if found, will be taken away from him.

[33] Next, upon the completion of the investigation, on 26 August 2014, the appellant was brought before the first respondent for the charge under s. 51 of the AFA. The first respondent then informed the appellant that he had determined that the appellant was guilty of the charge. The first respondent, however, informed the appellant that he may elect to be tried by a Court-Martial as provided under s. 97(9) of the same Act, which the appellant had elected to do. In the circumstances, the first respondent remanded the appellant by way of close arrest pending the disposal of the trial by the Court-Martial.

[34] In this regard, the first respondent was empowered to remand the appellant pending trial by the Court-Martial as provided for under s. 96(3), which states:

> (3) If, after an investigation, any charge is not dealt with summarily as aforesaid, **the accused shall be remanded for trial by the Court-Martial.** (emphasis added)

[35] Although there are instances where the word 'shall' does not carry a mandatory obligation, in the present case, the word 'shall' in s. 96(3), in our considered view, denotes a mandatory requirement, especially when the AFA concerns, among others, the discipline of army personnel that requires strict compliance with the law. Further, the AFA is a special legislation for soldiers who voluntarily agree to be governed by it.

(see also *Lock Wee Kock v. Menteri Hal Ehwal Dalam Negeri & Anor* [1993] 4 CLJ 211; *Low Cheng Soon v. TA Securities Sdn Bhd* [2003] 1 CLJ 309; *PP v. Cho Ka Heng* [1994] 2 CLJ 806).

[36] Be that as it may, s. 96(3) of the AFA authorises the appellant's remand pending trial before the Court-Martial. It is a valid law passed by Parliament and therefore, art. 5(1) of the Federal Constitution has not been infringed as the detention was in accordance with a valid law.

[37] Further, during the appellant's trial by the Court-Martial, the authority was empowered to place the appellant under close arrest except if the convening authority directs that the appellant be placed under open arrest or released from the arrest. This is provided under r. 16(1) of the AFRP that states:

> (1) During his trial by the Court-Martial, *the accused shall be held under close arrest, except where the convening authority directs* that, for the period of any adjournment of the court, *he shall be held under open arrest or released from arrest.* (emphasis added)

[38] The issue as to when the trial commenced to empower the authority to place the appellant under close arrest is irrelevant under the AFA and the AFRP. The appellant was placed under remand pending the trial by the Court-Martial as authorised by s. 96(3) of the AFA, and during the trial, the appellant was placed under close arrest as authorised by r. 16(1) of the AFRP. Thus, at the risk of repetition, the law empowers the authority to place the appellant under detention pending the trial before the Court-Martial under s. 96(3) of the AFA and during the appellant's trial before the Court-Martial under r. 16(1) of the AFRP.

[39] We are also of the same view as the Court of Appeal that the High Court in the *Baharuddin Kamsin* case (*supra*) had misconstrued the provisions in the AFA and the AFRP in deciding that r. 16(1) of the AFRP applies to place the accused under close arrest when the trial commences, and the trial commences when the prosecution calls its first witness as decided by the Supreme Court in the *Savrimuthu* case.

[40] In the *Baharuddin* case, the judge was also of the view that the provision of s. 96(3) does not envisage the trial before the Court-Martial. In his words, the judge said this:

> *... The provision of s 96(3) of the Act, in my view, is only applicable at the stage when the applicant as an accused person had not been brought as yet for trial before the Court-Martial. Section 96(3) empowers the commanding officer to detain the applicant as an accused person at a stage when he has completed his investigation on the applicant and decides not to try the applicant summarily by himself, but decides that the applicant be tried before the Court-Martial.* In the present case, the applicant had already appeared before the Court-Martial, and the charges had been preferred against him. There is no question of the commanding officer exercising his power to detain the applicant under close arrest at this stage of proceedings before the Court-Martial. On this point, I also find, as a matter of fact, that *this allegation of the commanding officer invoking his power under s. 96(3) was not averred to at all in the affidavit*

A *of the first respondent.* In the absence of such an averment, it must be taken to mean that there was no exercise of such power under section 96(3) of the Act by the commanding officer to detain the applicant until the hearing of the applicant's case before the Court-Martial. (emphasis added)

B **[41]** In this regard, we find the judge in the *Baharuddin* case has misconceived the provision of s. 96(3) and r. 16(1) in its totality. Although s. 96(3) of the AFA indeed is when the accused is yet to be brought before the Court-Martial, the main issue here is the power to detain the accused under close arrest for the trial before the Court-Martial. The wording of
C s. 96(3) is plain and unambiguous, that after the completion of the investigation, the accused shall be remanded for trial by the Court-Martial.

[42] The power to remand the appellant under s. 96(3) was for the trial by the Court-Martial. This is clearly before the commencement of the trial, before the Court-Martial, and during the trial before the Court-Martial. The
D power to detain the appellant is provided under r. 16(1) of the AFRP, as mentioned earlier. Therefore, the law empowers the detention of the appellant before and during the trial by the Court-Martial.

[43] As regards the *Savrimuthu* case, it does not concern the application of s. 96(3) of the AFA or r. 16(1) of the AFRP. It is a drug case under s. 39B
E of the Dangerous Drugs Act 1952, and the court in that case made a general observation on when the trial commences. It is irrelevant in the present case as the detention of the appellant was empowered by the law before and during the trial before the Court-Martial in accordance wth the AFA.

[44] We need to reiterate here that the AFA and AFRP are special
F legislations that were enacted by Parliament to govern the military and its personnel. When the appellant signed up as a member of the armed forces, he agreed to be subjected to its strict rules and regulations. The law that governs the military is certainly different from other laws. Otherwise, it is difficult to maintain the high discipline of the army personnel who needs to
G serve the country.

[45] This court in *Sjn U Ahmad Zaini Zainon lwn. Kolonel TUDM Norazrin Shamsudin & Yang Lain* Appeal No. 05(HC)-150-07-2021(B) stressed the same view in its broad grounds of judgment and said this:

H [10] Therefore, it is not tenable for this Court to entertain or allow this appeal. *It is worth reiterating that the law relating to the army is entirely different from that applicable to an ordinary citizen. It is entirely different from the law relating to criminal matters, where the accused are ordinary citizens. When a person signs up to join the army, he voluntarily succumbs and accept the extraordinary rules and life of a soldier. The military aspect of life in the army cannot be ignored …*

I [11] *As we comprehend it, it means that discipline and rigor are primary issues in the military way of life, which requires a degree of control far above that of the ordinary citizen. Soldiers have to comply without question. To what extent their*

disciplinary rules and regulations, which are strictly enforced, are also specially structured to deal with their way of life. Such rules and disciplinary procedures ought not to be lightly interfered with unless they are clearly unlawful. That cannot be said of Rule 16(1). (emphasis added)

[46] In the *Sjn U Ahmad* case, the appellant failed to challenge the constitutionality of r. 16(1) of the AFRP.

[47] Further, the reading of s. 96(3) of the AFA and r. 16(1) of the AFRP clearly shows that these provisions are not subject to any other provisions of the AFA or the AFRP. The wording of these provisions is plain and unambiguous to give their effect. The court's function is not to read words into the statute but to give effect to its plain wording.

(See also *PP v. Sihabduin Hj Salleh & Anor* [1981] CLJ 39; [1981] CLJ (Rep) 82; *Loh Kooi Choon v. Government Of Malaysia* [1975] CLJU 90; [1975] 1 LNS 90; [1977] 2 MLJ 187).

[48] On this issue, counsel for the appellant submitted that s. 96(3) and r. 16(1) must be read harmoniously with other Rules of the ARFP, in particular, rr. 13 and 14 of the AFRP. To put the issue in the proper context, it is pertinent to analyse rr. 13 and 14, which state as follows:

(i) Rule 13 – Reasons for arrest

(1) A person may not be placed or detained under arrest where the offence he has committed or is reasonably suspected of having committed is not serious in nature.

(2) A person shall be placed under arrest only when absolutely necessary, for example, when –

(a) the offence is punishable with death;

(b) he is deliberately trying to undermine discipline by acts of misconduct;

(c) he is likely to injure himself or others;

(d) he is likely to suborn witnesses;

(e) he has been apprehended (and has not surrendered himself) as being absent without leave or is habitually absent without leave;

(f) having regard to the nature or prevalence of the offence with which he is charged or which is under investigation, it is undesirable in the interests of discipline that he should be at large or in a position to consort with his comrades; or

(g) it is suspected that he will not attend the investigation of the case or the trial.

A (ii) Rule 14 – Reconsideration of arrest and investigation

(1) Subject to Rule 13, the person responsible (normally the commanding officer or the provost officer) for deciding whether a person should be kept under arrest and what the form of arrest should be, shall use his discretion from time to time, as
B circumstances may require, to change the form of arrest, to re-arrest or to release him without prejudice to re-arrest.

(2) The allegations against a person who is under arrest shall be duly investigated into without unnecessary delay, and as soon as possible, proceedings shall be instituted against him or he shall be duly released.
C

[49] Rule 13(1) stipulates that no person can be placed under arrest if the offence committed or reasonably suspected to be committed is not of a serious nature. This provision is clearly not applicable in the present case, as the offence against the appellant is a serious offence, which is a
D drug-related offence that infringed the 'standing order' made under s. 51 of the AFA. Surely armed forces personnel, who are part of the national security apparatus cannot be under the influence of prohibited substances, and any transgression of this standing order is a grave violation.

[50] Further, r. 13(2) provides the example of a serious offence where an
E arrest is absolutely necessary, and in the present case, the appellant's misconduct in the drug-related offence certainly undermines the discipline of army personnel. This falls under r. 13(2)(b) of the AFRP, apart from the fact that the example under r. 13(2) is not exhaustive.

[51] Next, r. 14 provides the commanding officer with a discretionary
F power to, among others, reconsider an arrest made and to investigate the allegation made against the accused without unnecessary delay.

[52] In the circumstances, rr. 13 and 14 of the AFRP do not affect the power of arrest by the commanding officer under s. 93(1) and 93(3) of the AFA, and in the present case, the said rr. 13 and 14 have not been infringed.
G

[53] In relation to this issue, the contention that s. 93 of the AFA should be read harmoniously with other rules of the AFRP is misconceived and irrelevant. The power of arrest by the commanding officer, as mentioned earlier, was clearly provided under ss. 93(1) and (3) of the AFA, and his
H power to detain the appellant pending investigation was provided under s. 94(2) of the same Act, having prepared the delay report required by the provision. For ease of reference, the provision of s. 94(2) is reproduced below:

> Wherever any person subject to service law under this Act, having been
I taken into service custody, *remains under arrest for a longer period than eight days without a Court-Martial for his trial being assembled, a special report for the necessity for further delay shall be made by his commanding officer to the prescribed*

authority in the prescribed manner, and a similar report to the like authority and in the like manner every eight days *until a Court-Martial is assembled or the offence is dealt with summarily or he is released from arrest.* (emphasis added)

[54] The doctrine of harmonious interpretation is not applicable in the present case, as there are no contradictory provisions in the AFA and the AFRP in particular, concerning s. 96(3) of the AFA and r. 16(1) of the AFRP. No provision in the AFA or AFRP defeats each other, and no reconciliation is needed in the provisions of AFA and AFRP.

[55] This court in *Pihak Berkuasa Tatatertib Majlis Perbandaran Seberang Perai & Anor v. Muziadi Mukhtar* [2020] 1 CLJ 1; [2020] 1 MLJ 14, explained the principle of harmonious construction in the following manner:

[78] In this regard, it would be convenient for us to discuss the doctrine of harmonious constructions. To put it simply, *the doctrine of harmonious construction means a statute should be read as a whole, and one provision of the Act should be construed with reference to other provisions in the same Act so as to make a consistent enactment of the whole statute. Such an interpretation is beneficial in avoiding any inconsistency or repugnancy either within a section or between a section or other parts of the statute.* The five main principles of the doctrine/rule are as follows:

(i) the court must avoid a head-on clash of seemingly contradictory provisions, and they must construe the contradictory provisions so as to harmonise them.

(see *Commissioner of Income Tax v. Hindustan Bulk Carriers* [2002] 3 SCC 57, p 74);

(ii) the provision of one section cannot be used to defeat the provision contained in another unless the court, despite all its efforts, is unable to find a way to reconcile their differences;

(iii) when it is impossible to completely reconcile the differences in contradictory provisions, the courts must interpret them in such a way that effect is given to both provisions as much as possible (see *Sultana Begum v. Prem Chand Jain* AIR 1997 SC 1006, pp 1009, 1010);

(iv) courts must also keep in mind that the interpretation that reduces one provision to useless or dead lumber is not harmonious construction (see *Commissioner of Income Tax v. Hindustan Bulk Carriers* [2002] 3 SCC 57, p. 74);

(vi) to harmonise is not to destroy any statutory provision or to render it fruitless.

(see also *Abdullah Attan v. PP & Others Appeals* [2020] 9 CLJ 151; [2020] 6 MLRA 28).

[56] In the present case, there is no inconsistency or repugnancy either in the AFA or between the AFA and the AFRP. Therefore, the issue of harmonious construction or interpretation does not arise.

[57] Based on the reasoning above, we find that the appellant was lawfully detained by the authority from 26 August 2014 until 3 July 2015.

Second Issue: Whether An Express Remand Order Is Required Under s. 96(3) Of The Armed Forces Act 1972

[58] There is no requirement under s. 96, in particular s. 96(3) of the AFA, that requires the authority to issue an express remand order. The provision of s. 96(3) is unambiguous that if the charge against the accused is to be tried by the Court-Martial, the accused shall be remanded for the trial. The law authorises or mandates that the accused be remanded pending trial by the Court-Martial. As such, there is no necessity for an express remand order.

[59] We should not equate the specific law of s. 96(3) of the AFA with s. 117 of the CPC as their application are poles apart. Section 117 is the discretionary power of a Magistrate to remand a suspect upon application by the enforcement agencies. An authorisation by a Magistrate is required under s. 117 to remand a suspect, and a Magistrate authorising a remand of an accused shall record his reason for doing so as required under s. 117(7). As such, under s. 117 of the CPC, there is a need for an express remand order, but not under s. 96(3) of the AFA.

[60] For ease of reference, the provision of s. 117 is reproduced below:

> 117(1) Whenever any person is arrested and detained in custody and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 28 and there are grounds for believing that the accusation or information is well founded the police officer making the investigation shall immediately transmit to a Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case and shall at the same time produce the accused before the Magistrate.
>
> (2) *The Magistrate before whom an accused person is produced under this section may,* whether he has or has no jurisdiction to try the case, *authorise the detention of the accused in such custody as follows:*
>
> (a) if the offence which is being investigated is punishable with imprisonment of less than fourteen years, the detention shall not be more than four days on the first application and shall not be more than three days on the second application; or
>
> (b) if the offence which is being investigated is punishable with death or imprisonment of fourteen years or more, the detention shall not be more than seven days on the first application and shall not be more than seven days on the second application.

(3) The officer making the investigation shall state in the copy of the entries in the diary referred to in subsection (1) any period of detention of the accused immediately prior to the application, whether or not such detention relates to the application.

(4) The Magistrate, in deciding the period of detention of the accused person, shall take into consideration any detention period immediately prior to the application, whether or not such detention relates to the application.

(5) The magistrate, in deciding the period of detention of the accused, shall allow representations to be made either by the accused himself or through a counsel of his choice.

(6) If the magistrate has no jurisdiction to try the case and considers further detention unnecessary, he may order the accused person to be produced before a Magistrate having such jurisdiction or, if the case is triable only by the High Court, before himself or another Magistrate having jurisdiction with a view to transmission for trial by the High Court.

(7) *A Magistrate authorising under this section detention in the custody of the police shall record his reasons for so doing.* (emphasis added)

[61] This court in *Inspector Yusof Hj Othman & Ors v. Kwan Hun Cheong* [2011] 8 CLJ 1; [2011] 8 MLJ 1 has explained the Magistrate's discretionary power to authorise the detention of an accused under s. 117 of the CPC as follows:

> [10] It is significant to note that s. 117 of the CPC relates to a detention of the accused person after arrest, while s. 388 of the CPC relates to the release of the accused person after arrest. *Under s. 117 of the CPC, a Magistrate, on the application by the police, may authorise the detention of the accused person in the police custody from time to time for a term not exceeding fifteen days in the whole.* Section 117 of the CPC is in my view derived from art. 5 of the Federal Constitution and s. 28 of the CPC. (emphasis added)

[62] Further, the discretionary power of the Magistrate under s. 117 is exercised on a case-by-case basis based on the application made and the grounds presented to the court. In the *Inspector Yusof* case, the court said this:

> [23] **It is to be noted that the Magistrate's power under s. 117 of the CPC is either to detain the accused person or to refuse the detention.** The question that comes to mind is what happens if the Magistrate refuses to grant the detention or to further extend the detention of an accused person. Obviously, under such circumstances, the police has no choice but to release the accused person. But, it is my respectful view that the release of the accused person under s. 117 of the CPC cannot be equated as an order to acquit and discharge the accused person from the criminal accusation. (emphasis added)

[63] This discretionary power of the Magistrate is subject to challenge as shown in number of cases before the court such as *Polis Diraja Malaysia v. Audrey Keong Mei Cheng* [1994] 3 CLJ 362; [1994] 3 MLJ 611, *In Re The Detention Of S Sivarasa & Ors* [1997] 1 CLJ 471; [1996] 3 MLJ 611; *Re Detention Of Leonard Teoh Hooi Leong* [1998] 1 CLJ 857; [1998] 1 MLJ 757 and *Lau Kong Peng & Ors v. PP* [1998] 4 CLJ Supp 156; [1998] 6 MLJ 501.

[64] The position under the AFA and the AFRP is totally different from the power of the detention under s. 117 of the CPC. Section 96(3) of the AFA and r. 16(1) of the AFRP specifically authorises the appellant's detention after the completion of the investigation and during the trial before the Court-Martial.

[65] Consequently, we find, there was no breach of art. 5(1) of the Federal Constitution as the appellant was detained during the said period in accordance with the law.

[66] Article 5(1) of the Federal Constitution states, "No person shall be deprived of his life or personal liberty save in accordance with law". It is a trite principle of law that this right is not absolute. The right as enshrined in art. 5(1) can be taken away by any provision of the law consistent with the phrase "save in accordance with law" therein.

[67] In *Letitia Bosman v. PP & Other Appeals* [2020] 8 CLJ 147, the principle of law is emphasised as follows:

> [132] The position in law on this matter is now well-settled. That **the constitutional rights as guaranteed under cl. (1) of art. 5 can be taken away in accordance with law** has been authoritatively established by a line of our authorities. In other words, a law that provides for the deprivation of a person's life or personal liberty is valid and binding **as long as it is validly passed by parliament.** (emphasis added)

[68] In the present case, the AFA and the AFRP are valid laws passed by Parliament, and s. 96(3) of the AFA and r. 16(1) of the AFRP empower the detention of the appellant. Thus, art. 5(1) has not been infringed.

Conclusion

[69] Based on our reasoning and decision above, we find it is not necessary to answer the leave question. In the circumstances, and having considered all relevant submissions by parties, oral and written, we upheld the decision of the Court of Appeal and dismissed the appellant's appeal. No order as to costs.